UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERTO EFRAIN PEREZ CASTRO,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MARY DE ANDA-YBARRA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement;
ANGEL GARITE, Assistant Field Office Director, El Paso Field Office, El Paso Service Processing Center; and
DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review,

Respondents.

Civil Action No. EP-25-CV-623

Immigration No. A [redacted]

PETITIONER'S ORIGINAL VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner Roberto Efrain Perez Castro ("Mr. Perez") is being detained by Immigration and Customs Enforcement ("ICE") at the ERO El Paso Camp East Montana facility in El Paso, Texas, despite having received no Notice to Appear ("NTA"), having no case pending in EOIR, and having been given no explanation for his arrest, transfer, or

confinement. *See* Ex. A. His detention as an Ecuadoran, Ex. B, national is non-statutory, indefinite, and violates the Fourth and Fifth Amendments to the United States Constitution.

2. Mr. Perez is also the plaintiff in an ongoing civil action pending in the New York Supreme Court, Queens County, *Perez Castro v. Forest Hills Chateau Corp.*, Index No. 700505/2020, where he is a key witness and the central party. **Trial is scheduled to begin on January 22, 2026**, and his physical presence is required. If ICE continues to detain him—or summarily removes him—his civil action will be irreparably prejudiced, the state court's processes will be impaired, and his due process rights will be violated.

3. ICE has refused to exercise prosecutorial discretion, has not placed him into removal proceedings, and has not provided any valid statutory authority for his ongoing custody. *See* Ex. D. ACIS confirms no case exists under his A-Number. *See* Ex. E. This petition seeks his immediate release under 28 U.S.C. § 2241.

4. Following his arrest in the New York area, Mr. Perez was transferred to ICE custody in Texas and is currently detained at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, TX 7993. *See* Ex. A, Proof of Detention in ICE Custody.

5. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Perez, due to a perceived lack of jurisdiction. These denials have relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Ex. C, Recent BIA Decisions on Bond. However, numerous federal district court, including some from within the jurisdiction of the United States Court of Appeals for the Fifth Circuit, have made clear that noncitizens detained under INA § 236(a) are entitled to individualized bond hearings.

6. Despite this posture, immigration judges continue to refuse to provide noncitizens such as Mr. Perez with an individualized custody redetermination hearing, asserting a lack of jurisdiction based on erroneous Board of Immigration Appeals precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the APA, because apprehension of those from the interior of the country is governed by INA § 236(a), which clearly provides that noncitizens are entitled to bond hearings.

7. Mr. Perez therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks injunctive relief directing Respondents release him or provide him with an individualized custody hearing or release him under reasonable conditions without delay, in order to restore Mr. Perez's constitutional and statutory rights and to prevent his unlawful and indefinite imprisonment. Injunctive relief, including a temporary restraining order, is warranted to halt the irreparable harm caused by his ongoing detention. Without immediate judicial intervention, Mr. Salazar will continue to suffer deprivation of his liberty, interruption of his pursuit of asylum, and the crushing anxiety of being indefinitely confined despite his full compliance with the government's supervision regime

II. JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action also invokes the Court's authority under the All Writs Act, 28 U.S.C. § 1651.

9. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek classwide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as "*Reno v. AADC*"). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

10. Venue is proper in this District, and in the El Paso Division, because Petitioner is detained at the ERO El Paso Camp Montana, 6920 Digital Road, El Paso, TX 7993, within this Court's jurisdiction, whereas Petitioner's detention is controlled by the El Paso Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

11. Petitioner, ROBERTO EFRAIN PEREZ CASTRO ("Mr. Perez"), is a citizen and national of Ecuador who has lived in the United States for many years. *See* Ex. B, Ecuadoran Passport. He was transferred to the El Paso Camp East Montana Detention Center, where he remains detained after his arrest by ICE near his home in Queens, NY.

12. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is sued in her official capacity.

13. Respondent TODD LYONS is the Acting Director of Immigration and Customs Enforcement ("ICE"), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

14. Respondent MARY DE ANDA-YBARRA is the Field Office Director responsible for the El Paso Field Office of ICE with administrative jurisdiction over Petitioner's case. She is a legal custodian of Petitioner and is named in her official capacity. She is sued in her official capacity as Petitioner's local custodian and DHS's local decisionmaker.

15. Respondent ANGEl GARITE is the Assistant Director of the El Paso Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the detention center, ERO El Paso Camp East Montana, which is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. ERO El Paso Camp East Montana is located at 6920 Digital Road, El Paso, TX 79936. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

16. Respondent, DAREN K. MARGOLIN is the Director of the Executive Office for Immigration Review ("EOIR"), responsible for directing and coordinating policy for the United States Immigration Courts, including policies governing immigration bond applications and custody-redetermination requests. He is sued in his official capacity. Respondents Noem and Lyons, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

17. Petitioner ROBERTO EFRAIN PEREZ CASTRO is a fifty-three-year-old citizen of Ecuador who has made the United States his home for many years. He entered the United States with a visa on or about more than six years ago, and he has lived here continuously since that date.

18. Until his recent transfer into a remote immigration facility in El Paso, Texas, Mr. Perez had lived and worked in the Queens, NY area for many years, where he developed close ties to his community. He has no history of violence and no disqualifying convictions that would justify treating him as a danger to society.

19. Upon information and belief, ICE apprehended Mr. Perez two city blocks from his home as he was going to the Department of Motor Vehicle on or about November 5, 2025.

20. When Mr. Perez was arrested, he had already been in the United States for several years. As a result of this, Mr. Perez is entitled to a custody redetermination hearing, also called a "bond hearing" under § 236(a), and not merely a summary expulsion—a natural result, in view of his history in this country.

21. Despite this posture, Mr. Perez has been treated for bond immigration purposes as though he were subject to the harshest form of "arriving alien" detention, even though he has lived in the United States for several years. Instead of being allowed to seek release on bond before an immigration judge, ICE has categorically denied him any chance to demonstrate that he is neither a danger to the community nor a flight risk. This blanket denial is not based on any individualized finding, but on the government's insistence on applying the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Those decisions—issued without notice-and-comment rulemaking, and in direct tension with binding circuit law—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Perez.

22. As a result, Mr. Perez now finds himself locked away at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, TX 79936, a remote facility hundreds of miles

from his community New York. *See* Ex. A. He is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar his release under Section 236(c) of the INA. Each day of confinement exacerbates the harm—separating him from family and community support, impeding his ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

23. Additionally, Petitioner has filed a civil lawsuit due to a horrible accident he had, that required three surgeries. Case number 700505/2020, currently pending in the Supreme Court of the State of New York, County of Queens: *Roberto Perez Castro v. Forest Hills Chateau Corp. et al.* Trial is set to begin January 22, 2026, and Petitioner is a main witness. *See* Ex. F, Declaration of Attorney Ryan Hallock.

24. Mr. Perez has a significant medical history involving major spinal surgery. He underwent [redacted] on July 17, 2020. *See* Ex. G, Post-Operative Evaluation.

25. Mr. Perez's treating orthopedic spine surgeon has documented ongoing pain, restricted cervical and lumbar range of motion, muscle spasms, and chronic residual symptoms consistent with severe preoperative conditions. Follow-up examinations through September 2023 reflect a 100% impairment rating.

26. Continued detention at a remote ICE facility places Mr. Perez's spinal condition at risk and impairs his access to necessary medical treatment.

27. ICE has not charged Mr. Perez under any ground of inadmissibility or deportability, has not issued an NTA, and has not placed him into removal proceedings.

28. Petitioner has requested a stay of relief to the Chief Counsel of Department of Homeland Security and was denied. While detained at the Delaney Hall Detention Center in New Jersey, a stay of removal was requested to ICE and the Counsel at the Department of Homeland Security in Elizabeth, New Jersey but has never answered.

29. In sum, Mr. Perez is a man with deep roots in the United States, strong claims for humanitarian protection, and no disqualifying criminal record. He has been thrust into prolonged civil detention solely because of the government's reliance on recent, non-binding BIA decisions that contravene the plain language of the INA. His detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

30. Immigration detention is governed primarily by two provisions of the INA: Section 235(b) [8 U.S.C. § 1225(b)] and Section 236(a) [8 U.S.C. § 1226(a)]. Whereas Section 236(a) of the INA authorizes the Attorney General to release noncitizens on bond pending removal proceedings, in contrast, Section 235(b) applies to certain categories of "arriving aliens" and mandates detention pending completion of expedited or threshold screening.

31. Congress designed § 236(a) to govern the detention of individuals who, like Petitioner, were detained in the interior of the United States, rather than at the threshold of entry. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

32. The Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) mandatory detention and § 236(a) discretionary custody). The Board of

Immigration Appeals itself recognized for decades that individuals in circumstances similar to those of Petitioner remained eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

33. Despite this clear statutory scheme, DHS has invoked recent BIA decisions (*i.e.*, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) to strip immigration judges of bond authority in cases such as those of Petitioner. Those decisions, however, cannot override the plain language of the statute.

34. In recent weeks, multiple district courts in 2025 have directly addressed the Government's efforts to expand § 1225(b)(2)(A) beyond its intended scope by assessing habeas petitions for noncitizens in similar circumstances and have repeatedly concluded that the clear and unambiguous language of Section 236 of the INA permits noncitizens who arrived without inspection—persons in precisely the same legal circumstances as Mr. Perez—are eligible to request bond hearings before the immigration court.

35. For example, in *Santos v. Noem*, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sept. 15, 2025), the court emphasized that habeas relief is proper to correct statutory misclassification and to preserve the petitioner's due process rights. In *Kostak v. Trump*, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court ordered bond eligibility under § 1226(a), rejecting the Government's assertion that § 1225(b) applied. Likewise, in *Salazar v. Dedos*, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025), the district court ordered an individualized bond hearing under § 1226(a) within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment's Due Process Clause.

36. Similarly, *Lopez v. Hardin*, 2025 U.S. Dist. LEXIS 188368 (N.D. Tex. 2025), and *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (S.D. Tex. 2025), further confirm that courts are rejecting agency efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a).

37. These holdings reflect a growing consensus that district courts retain jurisdiction to intervene where detention rests on a statutory misapplication and results in ongoing constitutional harm. The cumulative weight of these decisions underscores that Mr. Perez is entitled to bond consideration under § 1226(a).

VI. CLAIMS FOR RELIEF

Count I – Violation of INA § 236(a) [8 U.S.C. § 1226(a)]

38. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

39. Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing violates the INA and the precedent of various district courts within the United States Court of Appeals for the Fifth Circuit.

40. INA § 236(a), 8 U.S.C. § 1226(a), provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States," and that the Attorney General "may continue to detain the arrested alien" or "may release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole."

41. By its plain text, Section 236(a) applies to all noncitizens arrested and detained pending removal proceedings unless mandatory detention under § 236(c) applies.

42. In interpreting the plain language of Section 236(a), various federal district courts confirmed that noncitizens detained under Section 236(a) are statutorily eligible for individualized bond determinations before an immigration judge. Thus, the Attorney General must consider bond application by detained aliens pending the outcome of their removal proceedings, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

43. Although Petitioner is not yet in removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a], he remains eligible for release due to the unconstitutional nature of his apprehension by ICE near his home in New York, which did not occur at the threshold of entry, but rather, after Petitioner had already lived here for years. Because of this, Petitioner's custody is governed by § 236(a), not § 235(b).

44. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), Respondents have acted contrary to statutory authority requiring consideration of such bond application. This policy has supports the conclusion that the filing of a bond application with the immigration courts is currently a futile endeavor. Petitioner's continued detention without access to an individualized custody redetermination violates the INA and must be corrected through habeas relief.

45. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(a), as in other recent cases.

Count II – Fifth Amendment Due Process Violation

46. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

47. Petitioner's continued detention without access to an individualized custody redetermination hearing also violates the Due Process Clause of the Fifth Amendment. Prolonged detention without bond review is arbitrary, punitive, and unconstitutional.

48. The Supreme Court has long recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention is civil in nature, but it nonetheless implicates this fundamental liberty interest.

49. Because Petitioner is detained by ICE at the ERO El Paso Camp East Montana, he is categorically barred from presenting evidence that he is not a danger to the community and that he poses no flight risk. The blanket denial of access to a bond hearing strips Petitioner of the individualized determination required by due process and by the plain language of Section 236(a).

50. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Petitioner has no qualifying convictions that justify a categorical denial of release. His only arrest was conducted by ICE as a result of perceived alienage. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release.

51. Denying Petitioner any access to a bond hearing deprives him of procedural protections guaranteed by the Due Process Clause. Moreover, prolonged detention without meaningful review violates the substantive limits of due process, as articulated in *Zadvydas* and *Demore v. Kim*, 538 U.S. 510 (2003).

52. Petitioner is a long-time resident of the United States, with over six years of continuous presence. He has strong family and community ties in New York. There has been no finding that he is a danger to the community or a flight risk. Yet, solely because of recent, erroneous BIA decisions—decisions not binding in this Circuit—he has been categorically denied the process to which he is entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

53. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be released immediately, or in the alternative, afforded an immediate bond hearing pursuant to INA § 236(a).

Count III – Unlawful Agency Action (APA)

54. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

55. Respondents' continued detention of Petitioner without affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

56. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *see also* Ex. H, Pre-2025 Unpublished BIA Bond Decisions. That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles. These cases include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing criteria of danger to community and flight risk as factors for immigration bond requests);
- *In re L-E-V-H-*, AXXX-XXX-504 (BIA, Dec. 21, 2018) (despite noncitizen's testimony he had "turned himself in to officials at the border," held noncitizen had entered without inspection and was therefore not "arriving alien");
- *In re A-R-S-*, AXXX-XXX-161 (BIA, June 25, 2020) (remanding to develop record where noncitizen who had DACA alleged he had entered without inspection but had been misclassified as "arriving alien");
- *In re M-D-M-*, AXXX-XXX-797 (BIA, Aug. 24, 2020) (despite recent arrest, granted bond to noncitizen who had lived in the U.S. for over 20 years); and
- *In re F-P-J-*, AXXX-XXX-699 (BIA, Oct. 22, 2020) (where noncitizen had a pending circuit court appeal and IJ failed to consider alternatives to detention, granted bond to noncitizen who had lived in the U.S. for over 17 years).

57. In 2025, the BIA issued *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that certain noncitizens who entered without inspection are subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). These decisions abruptly stripped immigration judges of bond authority for a large class of detainees, including Petitioner, without notice-and-comment rulemaking and without reasoned explanation for abandoning prior precedent.

58. The APA requires agencies to engage in reasoned decision-making, and prohibits arbitrary or capricious action. 5 U.S.C. § 706(2)(A). The BIA's reversal of decades of established law without acknowledging or adequately explaining its departure is the very

definition of arbitrary and capricious action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

59. Although Petitioner has not filed a bond application since entering ICE custody on or about November 5, 2025, doing so would be futile, as immigration judges refuse to exercise jurisdiction, expressly relying on this recent BIA policy shift. *See* Ex. I, Sample IJ Bond Decision. By treating individuals such as Petitioner as subject to mandatory detention under Section 235(b), Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the plain language of Section 236(a) and unsupported by reasoned analysis.

60. Accordingly, Respondents' refusal to provide Petitioner an individualized custody redetermination hearing constitutes unlawful agency action under the APA, and this Court should grant habeas relief to remedy the violation.

Count IV – Denial of Access to Courts

61. Petitioner's civil trial cannot proceed without his presence, being a key witness and detention prevents him from exercising his right to access U.S. courts to pursue his claims.

62. Courts have found that detention which prevents access to legal proceedings constitutes a violation of due process, see *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004).

Count V – Fourth Amendment Violation

63. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

64. Petitioner incorporates by reference the foregoing factual allegations and asserts an additional, independent claim arising under the Fourth Amendment to the United States Constitution.

65. On or about the morning of November 5, 2025, Mr. Perez was arrested by ICE officers while he was on his way to the Department of Motor Vehicle in Queens, NY a few blocks from his home while walking. The officers did not present a warrant or have any individualized basis to believe that Mr. Perez had committed any immigration violation. Instead, the agents addressed him in Spanish and began questioning him about his immigration status.

66. This pattern of conduct demonstrates that ICE agents acted not pursuant to individualized suspicion, but rather engaged in a form of dragnet racial profiling directed at individuals of Hispanic appearance. Such conduct violates the Fourth Amendment's guarantee that "[t]he right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Supreme Court has made clear that seizures without probable cause, or predicated solely on race or ethnicity, are unconstitutional. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1975) (holding that apparent Mexican ancestry alone cannot justify a stop by immigration officers).

67. Here, there is no evidence that ICE possessed either (1) a valid arrest warrant specifically naming Petitioner, or (2) reasonable suspicion particularized to Petitioner that would justify a seizure. Instead, the agents' conduct fits precisely within the type of generalized, race-based enforcement action that *Brignoni-Ponce* and its progeny forbid. By seizing Petitioner without lawful authority, Respondents violated the Fourth Amendment.

68. This violation is not a mere procedural irregularity: it taints the very basis of Petitioner's detention. As courts have recognized, unlawful seizures may warrant suppression of evidence in immigration proceedings, and they independently justify habeas

relief where continued detention is the fruit of a Fourth Amendment violation. *See*, *e.g.*, *Oliva-Ramos v. Att'y Gen.*, 694 F.3d 259, 279-80 (3d Cir. 2012) (suppression warranted where ICE engaged in warrantless, suspicionless home raids); *Yanez-Marquez v. Lynch*, 789 F.3d 434, 449-50 (4th Cir. 2015) (held that exclusionary rule stemming from Fourth Amendment violations applies even in removal proceedings, because "[t]o hold otherwise would give no effect to the language used by the Supreme Court in *Lopez-Mendoza* expressing concern over fundamentally unfair methods of obtaining evidence and would ignore the fact that eight justices in *Lopez-Mendoza* seem to have agreed that the exclusionary rule applies in removal proceedings in some form"); *Orhorhaghe v. INS*, 38 F.3d 488, 501 (9th Cir. 1994) (suppressing evidence obtained through race-based immigration stop).

69. Moreover, Petitioner's arrest, effected in a public place without a judicial warrant, violated 8 U.S.C. § 1357(a)(2), which requires that immigration officers may arrest an alien without a warrant only where they have "reason to believe" the person is in violation of the law and is "likely to escape before a warrant can be obtained." No such exigent circumstances existed here. Petitioner was simply on his way to work.

70. Therefore, it is clear that Petitioner's ongoing detention is the direct product of an unconstitutional seizure and should be declared unlawful. This Court should grant habeas relief and order his release, or at minimum, declare that his seizure violated the Fourth Amendment and enjoin Respondents from continuing to detain him on the basis of this unconstitutional arrest.

VII. REQUEST FOR INJUNCTIVE RELIEF

71. Petitioner respectfully requests that this Court issue an injunction directing Respondents to immediately release him under reasonable conditions of supervision, or alternatively, to provide him an immediate individualized custody redetermination hearing under INA § 236(a) within seven (7) days. Petitioner further intends to request a temporary restraining order and preliminary injunctive relief as appropriate but will do so through a separate filing in accordance with the local rules of this Court.

72. The Supreme Court has made clear that such extraordinary relief depends on a four-factor test: likelihood of success on the merits, irreparable harm, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

A. Mr. Perez Is Likely to Succeed on the Merits of His Petition.

73. Mr. Perez has a strong likelihood of success on the merits of his claims. As explained more fully hereinabove, numerous district courts including some from within the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to that of Mr. Perez, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

74. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Perez might file—due to the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a).

75. Additionally, Mr. Perez raises valid constitutional claims under: (1) the Fourth Amendment, due to the unlawful nature of his arrest by ICE officers absent indicia of criminal activity that would give rise to a reasonable suspicion to detain or probable cause to arrest him, and (2) the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

76. Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner's claim is exceptionally strong.

B. Mr. Perez Will Suffer Irreparable Harm If an Injunction Does Not Issue.

77. If this Court does not grant immediate relief, Mr. Perez will continue to suffer irreparable harm. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Mr. Perez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

78. Even if Mr. Perez were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Perez's ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Perez's Favor.

79. The balance of equities tips decisively in Petitioner's favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right not to be arbitrarily detained without process. On the government's side, the only asserted interest is administrative convenience in applying the BIA's recent, and in this Circuit nonbinding, precedents.

80. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

D. There Is Strong Public Interest In Maintaining the Pre-2025 Status Quo.

81. Finally, the public interest strongly supports the issuance of an injunction. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. 556 U.S. at 435. The public has no interest in perpetuating unlawful detention; rather, the public's interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

82. Granting Petitioner an individualized bond hearing promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

83. Each factor of the equitable test weighs heavily in Mr. Perez's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section

236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

84. For these reasons, this Court should issue an injunction at the earliest possible opportunity, requiring Respondents to release him immediately under reasonable conditions, or in the alternative, to provide him with a bond hearing.

VIII. PRAYER FOR RELIEF

85. For the above and foregoing reasons, Petitioner respectfully requests that this Court take the following actions:

a. Issue a writ of habeas corpus ordering Respondents to release Petitioner immediately, or alternatively, to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;

b. Issue a declaration that DHS may not initiate or pursue expedited removal against Mr. Perez while he remains in habeas proceedings;

c. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are not classified as arriving aliens;

d. Grant permanent injunctive relief as appropriate;

e. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and

f. Grant such other relief as this Court deems just and proper.

DATE: December 6, 2025.

Respectfully submitted,

THE LAW OFFICE OF JOHN M. BRAY, PLLC
911 N. Bishop Ave.
Dallas, TX 75208
Tel: (855) 566-2729
Fax: (214) 960-4164
Email: john@jmblawfirm.com

By: */s/ John M. Bray*
John M. Bray
Texas Bar No. 24081360
ATTORNEY FOR PETITIONER

VERIFICATION

My name is Bielka Tortorelli ("Declarant"), and I am Petitioner's immigration counsel. I am above the age of twenty-one (21) years of age, am of sound mind, and am in all ways competent to execute this verification. Pursuant to 28 U.S.C. § 1746, I hereby declare that I have read the substance of the foregoing document, that I have personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of my knowledge and belief. Furthermore, certain facts not within my direct personal knowledge are supported by the attached declaration(s) and/or exhibit(s).

/s/ Bielka Tortorelli
BIELKA TORTORELLI,
Declarant

DATE: December 5, 2025.